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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 CHASE HAYES, an Individual, et al.,  
12 Plaintiffs,  
13 vs.  
14 GURU DENIM, INC.,  
15 Defendant.  
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CASE NO. 10 CV 0964 MMA (BLM)  
**ORDER SUA SPONTE  
DISMISSING SECOND AMENDED  
COMPLAINT FOR FAILURE TO  
STATE A CLAIM AND LACK OF  
SUBJECT MATTER  
JURISDICTION**  
[Doc. No. 7]

19 On May 14, 2010, Plaintiffs Chase Hayes, an Individual, and  
20 www.womendesignerclothes.com, a California business entity of unknown status ("Plaintiffs"),  
21 filed a second amended complaint ("SAC") for "Unfair Competition" [Doc. No. 7]. The Court  
22 previously granted Plaintiff Hayes' motion to proceed *in forma pauperis* ("IFP") [Doc. Nos. 2, 5].  
23 Accordingly, Plaintiffs' SAC is once again subject to mandatory screening under 28 U.S.C. §  
24 1915(e)(2), and is **DISMISSED** for the reasons set forth below.

25 **I. SUA SPONTE SCREENING PER 28 U.S.C. § 1915(e)(2)**

26 As the Court explained in its May 10 order [Doc. No. 5], when a plaintiff seeks to proceed  
27 IFP, the complaint is subject to mandatory screening and the Court must order the *sua sponte*  
28 dismissal of any case it finds "frivolous, malicious, failing to state a claim upon which relief may

1 be granted, or seeking monetary relief from a defendant immune from such relief.” 28 U.S.C. §  
 2 1915(e)(2)(B); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28  
 3 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”). A “court must accept as true all allegations  
 4 of material fact” and construe a *pro se*’s pleading liberally. *Resnick v. Hayes*, 213 F.3d 443, 447  
 5 (9th Cir. 2000). But the court may not “supply essential elements of claims that were not initially  
 6 pled.” *Ivey v. Board of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).  
 7 Here, Plaintiffs’ SAC merely re-pleads without amendment the two-paragraphs previously alleged  
 8 in their first amended complaint (“FAC”).<sup>1</sup>

9 Defendant, GURU DENIM, INC., was negligent in taking over  
 10 \$100,000 in Used and Offprice Jeans from Plaintiff under Defendant’s  
 11 claim of violating their trademarks and copyrights. First, Used Jeans  
 12 is neither trademark infringement nor unfair competition. Second,  
 13 Defendant sold the offprice Jeans to a third party whom sold them to  
 14 plaintiff (EX A).

15 Defendant **MALICIOUS** created a story about a Hoodie that they  
 16 purchase from Plaintiff website and used that claim to shut down  
 17 Plaintiff website and file a case which in the end ask the court for a  
 18 dismissal of the action, without prejudice (see EX B and attachments).

19 [Doc. No. 3, p.1-2 (emphasis in original).] Indeed, the only difference between the SAC and the  
 20 FAC, is the retitled caption, which now identifies the cause of action as “Unfair Competition” in  
 21 place of “Negligence and Violation of Interstate Commerce Laws [and] Malicious Prosecution.”  
 22 [See Doc. Nos. 3, 7.] In its prior Order, the Court explained several reasons why Plaintiffs’ FAC  
 23 was deficient, and therefore subject to dismissal—Plaintiffs have cured none of those deficiencies  
 24 in their SAC. [See Doc. No. 5.]

#### 25 (A) Plaintiffs’ SAC Fails to State a Claim Upon Which Relief May be Granted

26 First, the SAC again fails to state a claim on which relief can be granted. Instead of  
 27 augmenting their complaint, Plaintiffs re-designate their existing allegations as a cause of action  
 28 for unfair competition. Plaintiffs’ “amendment” is insufficient.

To state a cause of action for violation of California’ unfair competition law, Plaintiffs  
 must allege facts to establish that Defendant engaged in “unlawful, unfair, or fraudulent” business

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<sup>1</sup> All typographical and grammatical errors appear in the FAC and SAC, and have not been corrected by the Court.

1 acts or practices. Cal. Bus. & Prof. Code § 17200. Although unfair competition law covers a  
 2 wide range of conduct, Plaintiffs' limited and unclear allegations do not allege sufficient facts to  
 3 establish an unfair competition claim. Accordingly, Plaintiffs' SAC is subject to dismissal  
 4 pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), for failure to state a claim on which relief may be  
 5 granted.

6 **(B) The Court Lacks Jurisdiction Over Plaintiffs' Claim**

7 Second, even if Plaintiffs' allegations were sufficient to state an unfair competition claim,  
 8 dismissal is still appropriate because the Court lacks subject matter jurisdiction over this action.<sup>2</sup>  
 9 As the Court explained in its previous Order, federal courts have limited jurisdiction, and  
 10 therefore, can hear only certain types of claims that the Constitution or Congress has authorized  
 11 them to adjudicate. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994).  
 12 The Court's Order set forth several reasons why Plaintiffs' FAC failed to confer jurisdiction on  
 13 this Court, but Plaintiffs' SAC cures none of the deficiencies, and is therefore, subject to dismissal.  
 14 Specifically, the SAC does not demonstrate diversity of citizenship among the parties,<sup>3</sup> and  
 15 Plaintiffs' only claim is based on state law. Because Plaintiffs provide no basis for this Court's  
 16 jurisdiction, the SAC must be dismissed.

17 **(C) Www.womendesignclothes.com Cannot Proceed Without Counsel**

18 Finally, the Court previously instructed Plaintiffs that www.womendesignclothes.com, a  
 19 California business entity of unknown status, cannot proceed without counsel. "[U]nder a  
 20 long-standing common law rule of procedure, a corporation, unlike a natural person, cannot  
 21 represent itself before courts of record in propria persona, nor can it represent itself through a  
 22 corporate officer, director or other employee who is not an attorney. It must be represented by  
 23 licensed counsel in proceedings before courts of record." *CLD Construction, Inc. v. City of San*  
 24 *Ramon*, 120 Cal. App. 4th 1141, 1145-46 (2004). Indeed, the Court explicitly admonished

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25 <sup>2</sup> Federal Rule of Civil Procedure 12(h)(3) permits a district court to dismiss a complaint *sua*  
 26 *sponte* for lack of jurisdiction.

27 <sup>3</sup> Although the SAC does not allege the citizenship of the parties, the face of the SAC indicates  
 28 all parties are linked to California: Plaintiff Hayes maintains a residence in San Diego, California;  
 Plaintiff www.womendesignerclothes.com is a California business entity; and Defendant Guru Denim,  
 Inc. is a California Corporation.

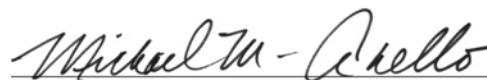
1 Plaintiffs that if they intended to re-file their complaint to cure the deficiencies noted in the May  
2 10 Order, www.womendesignerclothes.com must be represented by counsel and pay the required  
3 filing fee. [See Doc. No. 5, p.6; 28 U.S.C. § 1915(a) (only individuals may proceed *in forma*  
4 *pauperis*.)] Plaintiffs have failed to comply with the Court's instruction. Again, Plaintiffs attempt  
5 to bring their claim on behalf of www.womendesignerclothes.com, but have not retained counsel  
6 to appear on the company's behalf, and have not paid the required filing fee.

7 **II. CONCLUSION AND ORDER**

8 Upon reviewing Plaintiffs' SAC, **IT IS HEREBY ORDERED** that Plaintiffs' SAC is  
9 **DISMISSED** pursuant to Federal Rule of Civil Procedure 12(h)(3) and 28 U.S.C. § 1915(e)(2)(b).  
10 The Court dismisses Plaintiffs' SAC without prejudice as to their right to pursue their claim(s) in  
11 state court. The Court advises Plaintiffs that if they file a third amended complaint that fails to  
12 cure the deficiencies outlined above (and set forth in greater detail in the Court's May 10 Order),  
13 their complaint may be dismissed **with prejudice**, which will likely impact Plaintiffs' ability to  
14 pursue their claim(s) in state court or other appropriate forum.

15 **IT IS SO ORDERED.**

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17 DATED: May 19, 2010

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19 Hon. Michael M. Anello  
20 United States District Judge  
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